

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 20-23288 (RDD)
.
.
WB BRIDGE HOTEL, LLC, .
.
.
Debtor. .
.
NAT WASSERSTEIN, AS . Adv. Case No. 22-07059 (KYP)
TRUSTEE OF THE WB BRIDGE .
CREDITOR, .
.
Plaintiff, .
.
v. . 300 Quarropas Street
Room 147
11 APPLE, LLC, et al., . White Plains, NY 10601
.
Defendants. . August 29, 2024
10:01 a.m.
.

TRANSCRIPT OF ADVERSARY PROCEEDING: 22-07059-kyp
WASSERSTEIN, AS TRUSTEE OF THE WB BRIDGE CREDITOR V.
11 APPLE LLC ET AL
BEFORE THE HONORABLE KYU Y. PAEK
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Plaintiff: Rimon P.C.
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For the Defendants:

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Breitstone, LLP
By: SCOTT A. STEINBERG, ESQ.
190 Willis Avenue
Mineola, NY 11501

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1 THE COURT: Wasserstein versus 11 Apple, LLC,
2 Adversary Proceeding Number 22-07059.

3 MR. STEINBERG: Good morning, Your Honor. Scott
4 Steinberg from Meltzer, Lippe, Goldstein & Breitstone. We are
5 counsel for the defendants identified in Footnote 1 to our
6 memorandum of law in support of the motion to dismiss the
7 complaint.

8 MR. MAHONEY: Good morning, Your Honor. My name is
9 David Mahoney from RIMON P.C. We are counsel to Nat
10 Wasserstein in his capacity as the Trustee of the WB Bridge
11 Creditor Trust.

12 THE COURT: Mr. Steinberg, would you mind turning on
13 your camera?

14 MR. STEINBERG: Yes.

15 THE COURT: Okay.

16 MR. STEINBERG: I apologize, Your Honor.

17 THE COURT: No problem. Okay. So, now that these
18 papers are a little dated, I know there was a big dispute about
19 disqualification in this case.

20 But I did see a letter filed by defense counsel, the
21 new defense counsel stating that they would rely on the papers
22 filed by the predecessor counsel.

23 So, I'm ready to hear defendant's motion. So go
24 ahead.

25 MR. STEINBERG: Good morning, Your Honor. This

1 action arises out of the bankruptcy case of 159 Broadway and WB
2 Bridge Hotel which involved the construction and development of
3 a hotel at 159 Broadway.

4 Under the confirmed plan a trustee of the creditor
5 trust was appointed and the trustee is charged with the
6 responsibility of commencing and prosecuting fraudulent
7 conveyance and other avoidance actions amongst other claims,
8 Your Honor.

9 Your Honor, the present action is against 48,
10 initially against 48 defendants. I believe several have been
11 dismissed out since the complaint was filed. And it involves
12 alleged, 66 alleged transfers to the various defendants which
13 are identified, the transfers are identified on Schedule A to
14 the complaint.

15 But the complaint does not contain one single
16 allegation of what any individual defendant received, nor is
17 there any allegations as to what transfers were made to the
18 particular defendants in question.

19 This certainly does not put any defendant on notice
20 as to what it allegedly received or did wrong. Suffice it to
21 say there is not one ounce of meat on the bones which
22 constitute this complaint. Rather the causes of action
23 asserted I think as you'll see when you read the complaint,
24 Your Honor, are merely formulated restatements of what the
25 elements of the statutes require.

1 Basically, the complaint has but two paragraphs
2 concerning the transfers. Paragraph 69 alleges that defendant
3 Hager caused the debtor to make the transfers and Paragraph 70
4 alleges that the transfers were made for the benefit of the
5 defendants. Doesn't explain how, what, why, or in what manner
6 those facts, those allegations are made.

7 For those particular reasons, Your Honor, and others
8 which I will elaborate on with Your Honor's permission, the
9 complaint should be dismissed pursuant to Rule 12(b)(6) for
10 failure to state a cause of action and for failure to plead
11 fraud with particularity pursuant to Rule 9(b). And to the
12 extent Rule 8(a) is applicable, for failure to plead even
13 minimal recitation of facts necessary to put the respective
14 defendants on notice of the particular claims against them.

15 In addition, the complaint should be dismissed for
16 failure to plead and, well, at least Counts 1 through 6, Your
17 Honor, should be dismissed for failure to plead whether the
18 particular transferees are initial transferees, immediate
19 transferees, or mediate transferees. And the statement that
20 they are transferees is by itself insufficient to satisfy that
21 pleading requirement.

22 In short, Your Honor, I believe this is a case of sue
23 first and find out the facts later. Whether it was done
24 because of an impending statute of limitations issue or for
25 whatever reason, we are in essence telling the defendants at

1 this point you are guilty until you prove your innocence. And
2 that's not the way pleadings should be interpreted or applied
3 either in Bankruptcy Court or any other Federal Court.

4 Your Honor, I'd like to start with just a brief
5 discussion of what the standards of a 12(b)(6) motion are, and
6 the Supreme Court in Ashcroft v. Iqbal and Bell Atlantic v.
7 Twombly held that to survive a motion to dismiss a complaint
8 must contain sufficient factual matter to state a claim for
9 relief that is plausible on its face.

10 Plausibility has been interpreted to mean pleading
11 facts that allow the Court to draw a reasonable inference that
12 a defendant is liable for the misconduct alleged.

13 And, finally, Your Honor, a pleading cannot merely
14 recite the elements of a cause of action or conclusory
15 statements as a basis for relief. It needs to plead facts
16 which put a defendant on notice of the claims and the alleged
17 wrongdoing and allow the defendants to respond to those
18 allegations.

19 Here the complaint is beyond threadbare. Sixty-six
20 alleged transfers, not one transferee identified. No role of
21 factual allegations as to the transfers whatsoever except that
22 they were made on a date in a certain amount. And that
23 information is contained in Schedule A to the complaint.

24 There is nothing in the complaint that would go so
25 far as to satisfy Iqbal or Twombly analysis to the extent that

1 a threadbare complaint even requires the Court to get to that
2 analysis. I don't think it does in this case. I don't think
3 we have the bare minimum necessary to determine or the
4 plausibility even is required.

5 With Your Honor's permission I'd like to briefly
6 address the seven causes of action asserted in the complaint.
7 One --

8 THE COURT: Well you can sort of group them a little
9 bit, Mr. Steinberg. And I don't want to cut you off or
10 anything like that, but you have sort of the three buckets,
11 right? The intentional fraud, constructive fraud, and the
12 common law claim, the unjust enrichment claim.

13 MR. STEINBERG: I'll do that, Your Honor.

14 THE COURT: Okay.

15 MR. STEINBERG: With respect to the intentional fraud
16 claim, the first and fifth causes of action here, they seek to
17 invalidate transfers based on you know hindering, delaying, or
18 defrauding an entity, the traditional language set forth in
19 Sections 548 and the DCL.

20 Because these statutes have a fraudulent intent
21 requirement, Rule 9(b) requires that these claims be pled with
22 specificity. Again, one need only go so far as to note that
23 there's no information in the complaint as to which defendants
24 are transferees and what transfers were made to each particular
25 defendant. Respectfully, Your Honor, that omission is fatal.

1 It is a complaint cannot be deemed specific if it doesn't
2 identify which transferee received property.

3 In addition to the grounds for dismissing the
4 intentional fraudulent conveyance claims, those claims are also
5 under Rule 9(b), Your Honor, for failure to plead with
6 specificity, any acts constituting fraud. The heightened
7 pleading requirements of 9(b) are there for a reason. If
8 you're going to plead fraud, you need to tell the defendant
9 what he did wrong so as to allow the defendant to respond.
10 It's not up to the defendant here to take post-action discovery
11 to find out what he did wrong and all of the other elements of
12 a cause of action.

13 The defendant's acts or conduct, I mean the
14 conclusory statements that the defendant's acts or conduct was
15 fraudulent or deceptive simply don't make the cut. You can't
16 just simply rest on those conclusory statements. At a minimum
17 the complaint needs to allege facts that give rise to a strong
18 inference. Strong, as we've cited the case law in our papers
19 here as determined by the Court, a strong inference of
20 fraudulent intent. Here there are no facts on which any
21 inference can be gleaned, let alone a strong inference.

22 While the complaint attempts to allege badges of
23 fraud because we, as the Court knows actual intent is difficult
24 to prove, and we don't suggest that that is the single sole way
25 of proving a fraud. Badges of fraud can be relied on by a

1 trustee in situations like this.

2 But while the complaint attempts to allege badges of
3 fraud, most if not all of the badges have not been shown to be
4 present here. There are simply no allegations as to more than
5 one badge of fraud here and as such plaintiff has failed to
6 allege sufficient badges to establish an inference of actual
7 fraudulent intent of the transferor.

8 With respect to the constructive fraudulent
9 conveyance claims, Your Honor, that's the second, third, and
10 fourth claims, those claims seek recovery under DCL 273, 274,
11 and 275, and 548(a)(1)(B) of the Bankruptcy Code.

12 Just as a footnote, Your Honor, I note that it was
13 difficult in the complaint to determine which version of the
14 DCL applied because there were transfers that pre-date the
15 repeal of certain of the DCL statutes where the old statute
16 applied. So the numbering I believe in the complaint may be a
17 little off, but the underlying facts are not affected here and
18 we believe that the analysis is the same.

19 Specifically, Your Honor, as with the intentional
20 fraudulent conveyance claims, these claims fail to identify the
21 transferees of the respective transfers and are subject to
22 dismissal for the same reasons.

23 In Line B (phonetic) which has been applied in
24 various cases in the Second Circuit, to which there is
25 admittedly disagreement as to whether Rule 8(a) or Rule 9(b)

1 should be applied in various circumstances to constructive
2 fraudulent conveyance claims, fraudulent conveyance claims
3 should be, these claims should be dismissed for the same
4 reasons as the intentional fraudulent conveyance claims.

5 The claims here, the constructive fraudulent
6 conveyance, are sounded in a fraud, an alleged fraud committed
7 by the debtor or Mr. Hager in particular as he is alleged to be
8 the person in control. For that reason we believe the
9 heightened pleading requirement should be observed here.

10 But even if the Court were to conclude that 8(a)
11 applies, failure to identify the transferees is even fatal
12 under the more relaxed Rule 8(a) standard which requires at a
13 minimum that the complaint give each defendant a fair notice of
14 what the plaintiff's claim is and the grounds upon which the
15 claims are asserted.

16 This is a bare bones complaint. It does not give any
17 particular defendant fair notice of what the claims against it
18 are.

19 The complaint in the second, third, and fourth causes
20 of action, also constructive fraudulent conveyance claims, Your
21 Honor, fails to allege that the transfers were made with a lack
22 of good faith. That is specifically required by Section 272 of
23 the DCL which I don't believe plaintiff cites either in the
24 complaint or in its opposition.

25 The failure to allege, when alleging that lack of

1 fair consideration, one must allege under DCL 272 that the
2 complaint, that the transfers were made in the absence or
3 without good faith. That's not done here and we believe that,
4 again, that omission is fatal.

5 In addition to dismissal of the first causes of
6 action which would be the intentional fraud and the
7 constructive fraud claims, Your Honor, we believe the first,
8 second, third, fourth, fifth, and sixth, basically all claims
9 except the unjust enrichment claim, should be dismissed because
10 they do not allege which defendants were initial, mediate, or
11 immediate transferees.

12 That allegation is required under Sections 550 and
13 551 of the Bankruptcy Code. Again, it's not for the debtor
14 it's, I'm sorry, it's not for the defendant to figure out these
15 facts. They have to be pled to put a defendant on proper
16 notice of what the claims against it are.

17 Simply alleging that the transfers were made to or
18 for the benefit of the defendants is insufficient, especially
19 in the case where there are 48 alleged transferees, 48
20 defendants. Again, trying to determine who got what and when
21 they got it and in what capacity they received it, whether as
22 an initial transferee, as a mere conduit is not the defendant's
23 responsibility here. As such, these claims should likewise be
24 dismissed.

25 Finally, Your Honor, with respect to the unjust

1 enrichment claim, that's basically a restatement here or a
2 recitation of all the elements that cannot be proved, that the
3 complaint fails to establish with respect to the fraudulent
4 conveyance claims.

5 Unjust enrichment isn't a catchall, it's to be used
6 on when there's no contract here. It's not to be used when
7 there are statutory causes of action that can be alleged and
8 allegedly proven by facts.

9 And I don't think a whole lot more needs to be said
10 other than if you look at the exact allegations of the unjust
11 enrichment cause of action they, again, they are just bare
12 legal conclusions without asserting even one fact in support.

13 Finally, Your Honor, the defendants, the movants here
14 have alternatively sought a request that a more definitive
15 statement should be filed to the extent the Court believes that
16 the trustee deserves the benefit of the doubt with respect to
17 any of these causes of actions.

18 And at this point, Your Honor, I would ask if Your
19 Honor has any questions or would like me to further elaborate
20 on any point.

21 THE COURT: Mr. Steinberg, you in the motion asked
22 for a more definitive statement from the plaintiff. Do you
23 oppose the branch of the opposition seeking leave to amend
24 under Rule 15?

25 MR. STEINBERG: I do, Your Honor. The plaintiff has

1 had plenty of time to do its investigation here. It didn't
2 take any examinations prior to filing the complaint. Documents
3 were turned over to the plaintiff. Bank statements were
4 provided. It could have offered a tolling agreement. It could
5 have sought to extend the statute of limitations. It did
6 neither or nothing in that regard.

7 And I don't think we should be put to the test of
8 having to incur the expense of a motion to dismiss only to have
9 the plaintiff come back and say I'll try better this time,
10 Judge.

11 THE COURT: Understood.

12 MR. STEINBERG: That's not the purpose of an
13 amendment.

14 THE COURT: Understood.

15 MR. STEINBERG: To a complaint.

16 THE COURT: Okay. Mr. Mahoney.

17 MR. MAHONEY: Good morning, Your Honor. David
18 Mahoney for the trustee.

19 Your Honor, it's undisputed that the trustee has
20 alleged the date of every single transfer he seeks to avoid and
21 recover. It's undisputed that he asserts the amount of every
22 transfer he seeks to avoid and recover. It is undisputed that
23 the trustee has alleged that those transfers were made either
24 to or for the benefit of each of the moving defendants.

25 And as far as whether or not those allegations put

1 each of the individual moving defendants on notice, we submit
2 that it does. If you are to take any single one of the moving
3 defendants and have them represented by their own counsel, each
4 individual defendant would be on notice as to the date it is
5 alleged to have received either a transfer or the benefit of a
6 transfer and the amount of the transfer it is alleged to have
7 received or received the benefit of.

8 Each defendant can respond to the trustee's complaint
9 on its own. If in fact each of these defendants are
10 independent of each other and if in fact each of these
11 defendants has its own corporate identity, its own corporate
12 formalities, its own individual existence, it will be able to,
13 based on the facts alleged in this complaint, respond to
14 whether or not it received either a transfer or the benefit of
15 a transfer on all 66 of the transfers identified.

16 THE COURT: Mr. Mahoney, if I may. Do you dispute
17 that the actual fraud claims require the heightened pleading
18 standard under Rule 9(b)?

19 MR. MAHONEY: I do not dispute that that is the
20 standard under Rule 9(b). I do submit that the trustee has
21 satisfied that burden.

22 THE COURT: Okay.

23 MR. MAHONEY: The basis for that, Your Honor, is the
24 trustee does in fact allege several badges of fraud in the
25 complaint. There is the allegation that Hager, the former

1 principal of the debtor, owns either directly or through other
2 entities the majority interest in each of the entity
3 defendants. That allegation appears in Paragraph 63 of the
4 complaint.

5 We allege that Hager exercised dominion and control
6 over all of the entity defendants as well as the debtor. That
7 allegation is in Paragraph 64 of the complaint.

8 We allege that Hager transferred monies between the
9 moving defendants in Paragraph 66 of the complaint.

10 We allege that the entity defendants do not recognize
11 customary corporate formalities in Paragraph 65 of the
12 complaint.

13 We allege that all of these defendants operate out of
14 the same industrial location at 75 Huntington Street in
15 Brooklyn in Paragraph 67 of the complaint.

16 We allege that they share employees in Paragraph 68
17 of the complaint.

18 And then we allege that the transfers, each
19 identified by date and amount, were made to or for the benefit
20 of the moving defendants in Paragraph 69 and 70 of the
21 complaint.

22 You cannot ignore the allegation that Isaac Hager is
23 the driving force on both ends of the 66 transactions that are
24 alleged in this complaint. He was the principal of the debtor,
25 he had control of the debtor, he caused the debtor to make

1 transfers to entities that he is alleged to control on the
2 other end.

3 It is alleged that the debtor's books and records do
4 not reflect the receipt of goods or services constituting fair
5 consideration or reasonably equivalent value in exchange for
6 the transfers.

7 It's alleged that the debtor was insolvent at the
8 time the transfers were made. It had unsecured creditors at
9 the time that the debtors (sic) were made.

10 If the trustee's allegations are assumed to be true,
11 which they must be at this point in this litigation, these are
12 all insider transfers. Hager caused the debtor to make
13 transfers either to or for the benefit of himself as the
14 principal of the debtor and other entities that he controlled.

15 Now, the defendants may argue you can't prove that.
16 That is yet to be seen. But it is alleged and based on the
17 commonality of ownership, the commonality of control, the
18 commonality of location, the sharing of employees, and the lack
19 of corporate formality amongst those moving defendants, there
20 is enough meat on that bone for this Court to say you know
21 what, Trustee, you may prove this, you may not prove this, but
22 if I assume that what you are saying is true, there are the
23 badges and the indicia that Isaac Hager was taking debtor
24 assets and moving them out of the debtor away from the debtor's
25 legitimate creditors.

1 And from that we can infer the intent to hinder,
2 delay, or defraud those creditors that are no longer able to
3 access the \$7.2 million that Isaac Hager caused the debtor to
4 transfer out on the dates and in the amounts that are alleged
5 in the complaint.

6 Now, I think it is also important to note that, as
7 Your Honor is probably well aware, bankruptcy trustees are not
8 held to the same standard of pleading particularity in the
9 heightened pleading standard of Rule 9(b) that other plaintiffs
10 are.

11 In Gowan v. Patriot Group, LLC, it was an adversary
12 proceeding associated with the Dreir, LLP bankruptcy, former
13 Chief Judge Bernstein held that trustees are held to the more
14 liberal or relaxed standard when alleging actual fraud.

15 That holding is well founded because in cases where
16 actual fraud is alleged to have occurred, bankruptcy trustees
17 are coming in after the fact to clean up the mess that is left
18 behind by the debtor.

19 In many cases like Dreir and like this case, the
20 person controlling the debtor has been alleged to obfuscate the
21 fraudulent transfers identified in the complaint. The debtor's
22 own books and records did not reflect the recipients of these
23 transfers. It did not, those books and records did not reflect
24 the reason for those transfers. The debtor's books and records
25 did not reflect any consideration or reasonably equivalent

1 value that was given back to the debtor in exchange for the
2 transfers.

3 The fact is clear, Isaac Hager controlled the books
4 and records of the debtor. Isaac Hager is the individual who
5 is alleged to benefit from and be behind the corporations that
6 are alleged to have benefitted from these transfers.

7 We can also take note of the circumstances under
8 which this motion was filed. It's not a coincidence that
9 dozens of defendants that the trustee alleges to be connected
10 and controlled by Hager are all represented by the same law
11 firm that represents Hager. There is a commonality in
12 representation which implies a commonality of defense position,
13 defense strategy, and common interest in that representation.

14 It's also worthy of note that prior to Meltzer Lippe
15 being involved, Hager and all of those defendants were
16 represented by Leech Tishman, the successor-in-interest to
17 Robinson Brog. It's not a coincidence, Your Honor. It's not a
18 coincidence.

19 And I will point out that the defendant's argument
20 that the trustee should have done more to investigate the who,
21 the what, the where, the why of these transfers, he is alleging
22 that the trustee should have conducted that investigation in 34
23 days. Thirty-four days. Because the trustee's designation as
24 trustee of the creditor trust became effective on the effective
25 date of the plan 34 days prior to the statute of limitations.

1 Let's think about whose responsibility it was to
2 investigate the bonafides of these transactions prior to the
3 trustee's designation as creditor trustee. Who before the
4 trustee had the fiduciary duty to the creditors of this debtor
5 to investigate whether or not these -- who these transfers went
6 to, why these transfers were made, what consideration or value
7 is given back to the debtor in exchange for these transfers?

8 It was the debtor. This was a Chapter 11 case where
9 the debtor had that fiduciary duty. Where the debtor,
10 controlled by Isaac Hager, had the fiduciary duty to
11 investigate whether or not the 66 transfers in this adversary
12 proceeding were avoidable and recoverable for the benefit of
13 the creditors.

14 THE COURT: Mr. Mahoney, though isn't that why the
15 trust was created? I assume, because obviously I was
16 transferred over this case, but the plan clearly had this trust
17 created so that the trustee and you know for the benefit of
18 unsecured creditors can go after claims like this.

19 So, while I agree with you that the fiduciary
20 obligation rested with the debtor-in-possession during the
21 case, the plan in some ways contemplated that these lawsuits
22 did exist or these claims did exist, right?

23 MR. MAHONEY: It absolutely did. But the person
24 controlling --

25 THE COURT: Understood.

1 MR. MAHONEY: The defendants at this point. And I
2 think it's worthy to point out that in Leech Tishman's effort
3 to represent the defendant principal of the debtor and all of
4 his other related entities, once he became a target of an
5 avoidance action, made the argument in their motion or in their
6 opposition to our motion for disqualification that it had
7 failed to ensure the debtor did its -- fulfilled its fiduciary
8 duty to analyze the avoidability of these transfers.

9 That is now, the position that the defendants are now
10 taking is that we should ignore the fact that Hager didn't do
11 his job in 23 months and point all of the fingers at the
12 trustee to do what Hager's debtor should have done and to
13 complete that accounting and that investigation in 34 days.
14 The avoidability of these transfers was never supposed to see
15 the light of day.

16 So, at this point, Your Honor, I believe that every
17 single defendant, if they are in fact independent, if they do
18 in fact have their own identity, if they do in fact have their
19 own self-interest, have been provided with sufficient facts to
20 look at their own books and records and say okay, transfer one,
21 nope, we didn't receive that and there's no reason to believe
22 we got the benefit of it, transfer two, so on and so forth, all
23 down the line.

24 Each of these dozen defendants has enough information
25 to determine whether it can admit, deny, or deny knowledge or

1 information sufficient to admit or deny each of the allegations
2 in this complaint.

3 If there is a confusion created by the fact that
4 these dozens of defendants all have a commonality of interest,
5 all have a commonality of control, do not maintain corporate
6 formalities, those factors should not support an argument that
7 these claims should be dismissed, it should do the opposite.
8 It should demonstrate that there is meat on this bone, that
9 there is reason to believe that all of these defendants are
10 controlled by Hager, the same Hager that controlled the debtor,
11 the same Hager who transferred \$7.2 million out of an insolvent
12 debtor to these entities.

13 They should not be relieved from explaining to this
14 Court why that money left the debtor and why that money went to
15 either to or for the benefit of defendants that were controlled
16 by the same person who authorized their transfer on behalf of
17 the debtor.

18 THE COURT: Okay. Mr. Steinberg, a very brief
19 rebuttal, if any.

20 MR. STEINBERG: Yes, Your Honor, I'll be brief. The
21 trustee is placing enormous weight on factors which normally go
22 to an analysis of whether a corporate veil should be pierced.
23 You don't pierce a corporate veil unless and until you have a
24 judgment of wrongdoing.

25 So, to allege here that there's a commonality of

1 address, sharing of employees, things of that nature that one
2 would normally assert in a complaint to pierce the corporate
3 veil, don't go to the heart of what the trustee is seeking
4 here, and that is to avoid transfers.

5 They may go to the heart of whether one defendant
6 should be liable for a judgment against another defendant, but
7 they certainly don't weigh on the issue of whether the
8 complaint pleads sufficient facts to allege a fraudulent
9 conveyance claim. So, I'll leave it at that, Your Honor.

10 I have two other brief points, Your Honor. The fact
11 that here that the trustee had 34 days is sort of a not really
12 the point here. The trustee could have asked for a tolling
13 agreement. He could have devoted more resource to this.

14 As Your Honor correctly pointed out, when this plan
15 was negotiating, the issue of a creditor trust was always on
16 the table. At that point they should have started or the
17 trustee you know they could have asked for documents and
18 whatnot immediately upon confirmation of this case.

19 This cause of action did not just arise one month
20 before the statute of limitations expired here. So, they did
21 have -- if they couldn't do or review documents in 34 days,
22 they certainly had the ability to ask for a tolling agreement,
23 to ask this Court to extend the statute of limitations, or to
24 double their resources. Your Honor, as the trustee points out
25 for \$8 million, maybe they should have devoted more resources

1 to determine what's at stake here.

2 I think, Your Honor, again, if Your Honor has any
3 questions about the defendants' position, I'd be glad to
4 respond.

5 THE COURT: No. I'm ready to rule. Thank you for
6 the arguments.

7 The defendants have moved to dismiss this adversary
8 proceeding under Federal Civil Rule 12(b)(6), made applicable
9 to this proceeding by Federal Bankruptcy Rule 7012(b).

10 The Court has reviewed the parties' arguments and
11 grants the defendants' motion without prejudice to amend the
12 complaint.

13 To survive the motion to dismiss a complaint must
14 contain sufficient factual matter accepted as true, to state a
15 claim to relief that is plausible on its face; Ashcroft v.
16 Iqbal, 556 U.S. 662, 678 (2009).

17 The Court should accept all fact allegations in a
18 complaint as true and draw all reasonable inferences in favor
19 of the non-moving party; Johnson v. Rowley, 569 F.3d 40, 43 (2d
20 Cir. 2009).

21 Threadbare recitals of the elements of a cause of
22 action supported by mere conclusory statements do not suffice;
23 Iqbal, 556 U.S. 678.

24 A complaint must contain more than bare assertions
25 which amount to nothing more than a formulaic recitation of the

1 elements; Id., 681.

2 The first and fifth claims for actual fraud must meet
3 the pleading requirements of Rule 9(b). Courts have found that
4 transferees must be listed to meet this standard. See for
5 example In re M. Fabrikant Sons, Inc., 394 B.R. 721, 734 (Bnkr.
6 S.D.N.Y. 2008). These claims must be dismissed because the
7 complaint fails to identify the transferees of the fraudulent
8 transfers.

9 The remaining claims for constructive fraud and
10 unjust enrichment are typically examined under the relaxed
11 pleading requirements of Rule 8(a). Nonetheless, these claims
12 too must be dismissed because the factual allegations are
13 threadbare, often simply setting out the elements of the claim
14 followed by a conclusory statement that the allegations satisfy
15 the standard.

16 The parties have requested the plaintiff be given an
17 opportunity to amend the complaint either via Rule 12(e) or
18 Rule 15.

19 Under Rule 15 a party may amend its pleading only
20 with the opposing party's written consent, or the Court's
21 leave. The Court should freely give leave when justice so
22 requires.

23 The Court will grant the branch of the trustee's
24 opposition seeking leave to amend, especially given the short
25 period of time the trustee had to file his initial complaint

1 before the expiration of the applicable statute of limitations.

2 Therefore, the Court will dismiss the complaint but
3 grant the plaintiff leave to amend and file an amended
4 complaint within 45 days of the order dismissing the original
5 complaint and the plaintiff's counsel should submit an order.

6 MR. MAHONEY: Plaintiff's counsel, Your Honor?

7 THE COURT: Yes.

8 MR. STEINBERG: Thank you, Your Honor.

9 THE COURT: Thank you. Do you know the e-order
10 system? I've adopted Judge Morris' e-order system. Just check
11 the website, Mr. Mahoney, on how to electronically submit the
12 order.

13 Mr. Mahoney, while you're on, you know, I've recently
14 received these cases in some of the other adversary proceedings
15 and sort of in the dark about some of the other APs related to
16 this case.

17 Would it be possible to file a status letter on
18 either the main case or make sure to send an email copy to my
19 chambers, to set out what the status of the cases are so I can
20 figure out which ones I should schedule for motions or for
21 status conferences and the like.

22 MR. MAHONEY: Yes, Your Honor.

23 THE COURT: Okay. Great.

24 MR. STEINBERG: Your Honor, may I be excused from the
25 Zoom?

1 THE COURT: Yes.

2 MR. STEINBERG: Thank you.

3 THE COURT: Thank you, Mr. Steinberg.

4 MR. STEINBERG: Thank you, Your Honor.

5 MR. MAHONEY: Your Honor, could I have until --

6 THE COURT: Two weeks. I mean, you could do it, you
7 can file it before then. I wasn't trying to put you on a sort
8 of strict schedule. I just want to get a sense of where the
9 cases on my docket are.

10 MR. MAHONEY: Absolutely, Your Honor. I'll file that
11 before September 13th.

12 THE COURT: Great.

13 MR. MAHONEY: Thank you.

14 THE COURT: Thank you.

15 * * * * *

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17 **C E R T I F I C A T I O N**

18 I, JANET D. PERSONS, court approved transcriber,
19 certify that the foregoing is a correct transcript from the
20 official electronic sound recording of the proceedings in the
21 above-entitled matter to the best of my ability.

22

23 /s/ Janet D. Persons

24 JANET D. PERSONS

25 J&J COURT TRANSCRIBERS, INC.

Date: September 10, 2024